IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 40 OF 2007

M/s. Mohit Steel Industries
Pvt. Ltd., a Company incorporated
under the Companies Act, 1956
through its authorized representative
Mr. Niraj Jaju, major, having their
registered office at 342,
Kundaim Industrial Estate,
Kundaim – 403 115,
Ponda Taluka, North Goa District. ... Applicant

versus

1. M/s. Scot International,
   1494, 4th C. Main, 11th Cross,
   Mahalaxmipuram,
   Bangalore 560 086,
   Karnataka State.

2. Dr. Raj @ Dr. Shanta Raju,
   Proprietor of M/s. Scot
   International, 1494, 4th C Main,
   11th Cross, Mahalaxmipuram,
   Bangalore 560 086,
   Karnataka State. ... Respondents

Mr. D. Pangam, Advocate for the Applicant.

Mr. J. Godinho, Advocate for the Respondent Nos.1 and 2.

Mr. C. A. Ferreira, Amicus Curiae.

CORAM : N. A. BRITTO, J.

DATE : 6TH SEPTEMBER, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of both parties and Mr. C. A. Ferreira, the learned Amicus Curiae.

2. This is Complainant's application for condonation of delay in filing a revision petition against the Order dated 4-10-2006 of the learned Additional Sessions Judge, Panaji.

3. The parties hereto are referred to in the names as they appear in the cause title of the complaint.

4. Some facts are required to be stated to dispose off the application for condonation of delay.

5. The Complainant had prosecuted the accused under Section 138 of the Act(Negotiable Instrument Act, 1881) and as the complaint was filed with delay of 32 days, the said delay came to be condoned by the learned J.M.F.C. by Order dated 5-7-2005. Against the said order, the accused preferred a revision application which came to be allowed and the complaint came to be dismissed along with the application for condonation of delay.

6. Although the application for condonation of delay, in filing the revision, was initially filed to condone a delay of 37 days, Shri. D. Pangam, learned Counsel on behalf of the Complainant has submitted that in terms of Article 137 of the Schedule to the Limitation Act, 1963, the period to file a revision would be three years. As per Shri. Pangam, the learned Counsel on behalf of the Complainant, Article 131 of the said Schedule would be inapplicable because it refers to the Code of Criminal Procedure, 1898 and not to the Code of Criminal Procedure, 1973. The said Article 131 reads as follows:-

	Description of application	Period of limitation	Time from which period begins to run
131.	To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908(5 of 1908), or the Code of Criminal Procedure, 1898 (5 of 1898).	Ninety days	The date of the decree or order or sentence sought to be revised.

7. Referring to Section 2(j) of the Limitation Act, 1963, learned Counsel submits that the period of limitation has strictly to be construed in terms of the Schedule. In fact, Section 2(j) defines “period of limitation” to mean the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act(the Limitation Act, 1963). Learned Counsel submits that limitation cannot be computed in terms of something which is not

referred to in the Schedule and since the law of limitation is alien to criminal matters, unless specifically provided for, learned Counsel submits that limitation has got to be computed in terms of the said Schedule alone. Learned Counsel therefore submits that the year 1898 in Article 131 of the said Schedule cannot be read as the year 1973 and since the legislature has made no provision to replace the year 1898 in Article 131 of the Schedule by the year 1973, the Court is not bound to continue the year 1898 as year 1973.

8. Referring to **The Bombay Gas Co. Ltd.** v. **Gopal Bhiva and others**(AIR 1964 SC 752) learned Counsel contends that in case the legislature has made no provision for limitation, it would not be open to the courts to introduce any such limitation on grounds of fairness or justice. Again, relying on **A. S. K. Krishnappa Chettiar** v. **S. V. V. Somiah**(AIR 1964 SC 227) the learned Counsel contends that the Limitation Act, 1963 is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code as it is a piece of adjective or procedural law and not of substantive law. Referring to the same decision, the learned Counsel contends that rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication and they cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. The learned Counsel therefore contends that it would not be correct to apply any of the provisions of

the Limitation Act to matters which do not strictly fall within the purview of those provisions. Referring to **M/s. Bharat Barrel and Drum Mfg. Co. Ltd. and another** v. **The Employees State Insurance Corporation**(1971(2) SCC 860) the learned Counsel contends that apart from legislative action in the Limitation Act, 1963, prescribing the time, there is no period of limitation recognized under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. Referring to **Smt. Nirmala Sundari Dassi** v. **Sudhir Kumar Mitter**(AIR 1955 Calcutta 484) the learned Counsel contends that before the right of a person can be taken away under the Limitation Act it has to come within the specific terms of the Limitation Act. The learned Counsel has again referred to **Queen-Empress** v. **Ajudhia Singh and others**(1888 I.LR. 10 All. 351) and submitted that there cannot be, in the case of appeals arising out of criminal proceedings, no period of limitation applicable on general principles of law, and, has also referred to **Lala Balmukund(Dead) through L.R.** v. **Lajwanti and others**((1975) 1 SCC 725) and submitted that a court ought to avoid an interpretation upon a statute of limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the Legislature. The learned Counsel has also relied on **Magor and St. Mellons Rural District Council** v. **Newport Corporation**(1951 All. E. R. 839) and submitted that even in case if the words are ambiguous in a given statute, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited and has also referred to the following passage from the Judgment “if a gap is disclosed, the remedy lies in amending the Act”.

9. The learned Counsel further submits that the Limitation Act, 1963 has been amended from time to time including the Schedule but Article 131 has remained the same. The learned Counsel further submits that the Code of Criminal Procedure, 1973 has also been amended from time to time but no separate provision is made and Article 131 of the Limitation Act, 1963 has not been amended. In this context, Shri Pangam, the learned Counsel has relied on **Hindustan Times Ltd.** v. **Union of India and others**((1998) 2 SCC 242) and submitted that since the legislature has not amended the said Article 131 of the Schedule it discloses the intention of the legislature not to prescribe any period of limitation for the purpose of filing a revision petition after the enactment of the Code of Criminal Procedure, 1973. The Apex Court in the aforesaid decision referring to **The Bombay Gas Co. Ltd.** v. **Gopal Bhiva and others**(supra) has stated thus:-

> "It seems to us that where the legislature has made no provision for limitation, it would not be open to the courts to introduce any such limitation on grounds of fairness or justice".

10. On the other hand, Shri J. Godinho, the learned Counsel on behalf of the accused has referred to **Ramkrishna Jairam Damdar** v. **Savita Ramkrishna Damdar**(2002(2) Mh. L. J. 65) wherein a learned Bench of this Court has held that delay in preferring a revision application under Section 397(Cr. P. C.) before the Sessions Court could be condoned as applicability of

provisions of Section 5, Limitation Act, 1963 was not specifically excluded. Needless to observe that the point raised on behalf of the Complainant was not raised in the case of **Ramkrishna Jairam Damdas** v. **Savita Ramkrishna Damdar**(supra) and therefore was not decided by the Court. Similar is the position in the case of **State(Delhi Administration)** v. **Dharampal**((2001) 10 SCC 372) wherein the Apex Court referring to Article 114(a) of the Limitation Act, 1963 stated that appeals by the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. If there is a delay in filing an appeal by the State Government or the Central Government, it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. In the aforesaid two decisions, the Courts have proceeded on the assumption that the provisions of Article 131 as well as Article 114(a), both of which refer to the Code of Criminal Procedure, 1898 continue to remain in force after the Code of Criminal Procedure, 1973 came into force, and, that could not be without any reasons and reasons are not very difficult to find.

11. Section 8 of the General Clauses Act, 1897, reads as follows:-

> 8. Construction of references to repealed enactments.- (1) Where this Act, or any[Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former

> enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.
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> [(2)] [Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then reference in any [Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]

12. There is no dispute nor there could be any that the Code of Criminal Procedure, 1898 has been repealed and re-enacted in the form of the Code of Criminal Procedure, 1973 and the entire gamut of criminal procedural law which was contained in the old Code of 1898 now finds place in the new Code of 1973. It is a well settled principle of law that when an Act is repealed and re-enacted, unless a different expression is expressed by the legislature, the reference to the repealed Act has got to be considered as a reference to the provisions of the Act which is re-enacted and this is based on Section 8 of the General Clauses Act, 1897 or the principle underlying it. Section 8 of the said Act has been described as an illustration of a general and well established principle of interpretation that normally the repeal and re-enactment of a law should not upset the scheme and provisions of other enactments which relate to the repealed enactment. If any authorities are required to support the proposition, we may refer to the following:

(a) In **M/s. Chemitex, Panaji, Goa and another** v. **Union of India and others**(1982 TAX L. R. 2877) the Hon'ble Acting Judicial Commissioner by placing reliance on Section 8 of the General Clause Act, 1897 held that a reference to the Sea Customs Act, 1878 in Central Excise and Salt Act, 1944 had to be construed as a reference to Customs Act, 1962.

(b) In **Ram Prosad Ramnarain** v. **Bejoy Kumar Sadhukhan**(AIR 1966 Calcutta 488) a Division Bench of that Court held that Section 8(1) of the General Clauses Act, 1897 and the principle underlying it applies to all cases of repeal and re-enactment with or without modifications, and therefore any reference in such cases, to the provisions of the repealed Act in the incorporating Acts or provisions of Acts has to be construed as a reference to corresponding provision of the re-enacted Act. That was a case where a reference to the Indian Limitation Act, 1908 in W. B. City Civil Courts Act, 1953 was read as a reference to the Limitation Act, 1963.

(c) In **Government of A. P.** v. **M/s. Durgaram Prasad**(AIR 1984

A.P. 14) reference to the Indian Limitation Act, 1908 in Section 37 of the Arbitration Act, 1940 was read as a reference to the Limitation Act, 1963 observing that since the Act of 1908 was substituted by Act of 1963 by repeal, the new provisions of the Act of 1963 would be applicable and lastly,

(d) In **K. Subramanian and others** v. **State through Inspector of Police**(1988(18) IJR 18.19) it was held that after the repeal of the Code of 1898 and passing of the Code of 1973 wherever reference is made in the Act, to the Code of 1898 the same has to be read as a reference to the Code of 1973(2 of 1974).

13. It is therefore obvious that any reference in the relevant articles of the Schedule of the Limitation Act, 1963 to the Code of Criminal Procedure, 1898 has got now to be read as a reference to the Code of Criminal Procedure, 1973 and therefore the Complainant's contention that the Complainant was entitled to file this petition under residuary Article 137 of the Limitation Act needs to be rejected.

14. Coming to the merits of the case, it has been stated on behalf of the Complainant that although the impugned Order was passed on 4-10-2006 the Complainant's Director Niraj Jaju came to know about the same on 18-1-2007 and

thereafter came to Goa on 18-1-2007 for the purpose of applying for and taking delivery of the certified copy and thereafter again came down on 15-2-2007 for the purpose of filing the revision which was filed on 26-2-2007. The learned Counsel on behalf of the Complainant contends that the Respondents have not denied the statements made by the said Director in support of the application, and, I find that it is rightly so, on perusal of the affidavit in reply filed by the accused.

15. The Complainant was asked to produce at least one of the tickets to show his arrival to Goa, at least on one occasion, but the Complainant has failed to produce the same. Nevertheless considering the period of delay and want of denial to the facts stated, this could be a fit case to condone the delay by imposing a cost of Rs.5000/- to be paid by the Complainant to the Respondent/Accused, as condition precedent.

Delay condoned.

N. A. BRITTO, J.

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